

AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 234

Introduced by Assembly Member Corbett
(Principal coauthor: Assembly Member Mullin)

January 30, 2003

An act to amend Sections 17276 and 24416 of, and to add Sections 17276.8 and 24416.8 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 234, as amended, Corbett. Income and ~~bank and~~ corporation taxes: net operating losses.

The Personal Income Tax Law and the ~~Bank and~~ Corporation Tax Law allow a deduction for specified portions of net operating losses that, in general, are allowed to be carried forward for specified periods. *Among other things, those laws provide for a carryforward of 60% of net operating losses for any taxable year beginning on or after January 1, 2002, and before January 1, 2004, and 100% for any taxable year beginning on or after January 1, 2004. However, those laws allow a carryforward of 100% of net operating losses for any taxable year beginning on or after January 1, 1997, in the case of a taxpayer who operates a new business with respect to losses incurred during the first 3 taxable years of operating the new business, if certain conditions are met. A new business includes any taxpayer that is engaged in biopharmaceutical and other biotechnology activities, as defined.*

This bill would, ~~in conformance with federal law, for taxable years beginning on or after January 1, 2003, and ending on or before January~~

~~1, 2004, authorize a taxpayer engaged in a business in the biopharmaceutical and other biotechnology business activities, as defined, whether or not the taxpayer is a new business, that has not received federal regulatory approval for any product, to deduct 100% of the net operating losses incurred during the period beginning September 1, 2001, and ending on or before January 1, 2004 taxable year beginning on or after January 1, 2003.~~

~~This bill, also in conformance with federal law, would also allow those losses to be carried forward for the 20-year period following the year in which the net operating loss was deducted.~~

~~This bill would take effect immediately as a tax levy.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17276 of the Revenue and Taxation
2 Code is amended to read:
3 17276. Except as provided in Sections 17276.1, 17276.2,
4 17276.4, 17276.5, 17276.6, 17276.7, and 17276.8, the deduction
5 provided by Section 172 of the Internal Revenue Code, relating to
6 a net operating loss deduction, shall be modified as follows:
7 (a) (1) Net operating losses attributable to taxable years
8 beginning before January 1, 1987, shall not be allowed.
9 (2) A net operating loss shall not be carried forward to any
10 taxable year beginning before January 1, 1987.
11 (b) (1) Except as provided in paragraphs (2) and (3), the
12 provisions of Section 172(b)(2) of the Internal Revenue Code,
13 relating to the amount of carryovers, shall be modified so that the
14 applicable percentage of the entire amount of the net operating loss
15 for any taxable year shall be eligible for carryover to any
16 subsequent taxable year. For purposes of this subdivision, the
17 applicable percentage shall be:
18 (A) Fifty percent for any taxable year beginning before January
19 1, 2000.
20 (B) Fifty-five percent for any taxable year beginning on or after
21 January 1, 2000, and before January 1, 2002.
22 (C) Sixty percent for any taxable year beginning on or after
23 January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable

1 percentage of that amount shall be carried forward as provided in
2 subdivision (d).

3 (C) For purposes of Section 172(b)(2) of the Internal Revenue
4 Code, the amount described in clause (ii) of subparagraph (B) shall
5 be absorbed before the amount described in clause (i) of
6 subparagraph (B).

7 (4) In the case of a taxpayer who has a net operating loss in a
8 taxable year beginning on or after January 1, 1994, and who
9 operates a business that qualifies as both a new business and an
10 eligible small business under this section, that business shall be
11 treated as a new business for the first three taxable years of the new
12 business.

13 (5) In the case of a taxpayer who has a net operating loss in a
14 taxable year beginning on or after January 1, 1994, and who
15 operates more than one business, and more than one of those
16 businesses qualifies as either a new business or an eligible small
17 business under this section, paragraph (2) shall be applied first,
18 except that if there is any remaining portion of the net operating
19 loss after application of clause (i) of subparagraph (B) of that
20 paragraph, paragraph (3) shall be applied to the remaining portion
21 of the net operating loss as though that remaining portion of the net
22 operating loss constituted the entire net operating loss.

23 (6) For purposes of this section, the term “net loss” means the
24 amount of net loss after application of Sections 465 and 469 of the
25 Internal Revenue Code.

26 (c) Net operating loss carrybacks shall not be allowed.

27 (d) (1) (A) For a net operating loss for any taxable year
28 beginning on or after January 1, 1987, and before January 1, 2000,
29 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
30 years to which net operating losses may be carried, is modified to
31 substitute “five taxable years” in lieu of “20 taxable years”
32 except as otherwise provided in paragraphs (2) and (3).

33 (B) For a net operating loss for any taxable year beginning on
34 or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal
35 Revenue Code, relating to years to which net operating losses may
36 be carried, is modified to substitute “10 taxable years” in lieu of
37 “20 taxable years.”

38 (2) For any taxable year beginning before January 1, 2000, in
39 the case of a “new business,” the “five taxable years” in
40 paragraph (1) shall be modified to read as follows:



1 (A) “Eight taxable years” for a net operating loss attributable
2 to the first taxable year of that new business.

3 (B) “Seven taxable years” for a net operating loss attributable
4 to the second taxable year of that new business.

5 (C) “Six taxable years” for a net operating loss attributable to
6 the third taxable year of that new business.

7 (3) For any carryover of a net operating loss for which a
8 deduction is denied by Section 17276.3, the carryover period
9 specified in this subdivision shall be extended as follows:

10 (A) By one year for a net operating loss attributable to taxable
11 years beginning in 1991.

12 (B) By two years for a net operating loss attributable to taxable
13 years beginning prior to January 1, 1991.

14 (4) The net operating loss attributable to taxable years
15 beginning on or after January 1, 1987, and before January 1, 1994,
16 shall be a net operating loss carryover to each of the 10 taxable
17 years following the year of the loss if it is incurred by a taxpayer
18 that is under the jurisdiction of the court in a Title 11 or similar case
19 at any time during the income year. The loss carryover provided
20 in the preceding sentence shall not apply to any loss incurred after
21 the date the taxpayer is no longer under the jurisdiction of the court
22 in a Title 11 or similar case.

23 (e) For purposes of this section:

24 (1) “Eligible small business” means any trade or business that
25 has gross receipts, less returns and allowances, of less than one
26 million dollars (\$1,000,000) during the taxable year.

27 (2) Except as provided in subdivision (f), “new business”
28 means any trade or business activity that is first commenced in this
29 state on or after January 1, 1994.

30 (3) “Title 11 or similar case” shall have the same meaning as
31 in Section 368(a)(3) of the Internal Revenue Code.

32 (4) In the case of any trade or business activity conducted by a
33 partnership or “S corporation,” paragraphs (1) and (2) shall be
34 applied to the partnership or “S corporation.”

35 (f) For purposes of this section, in determining whether a trade
36 or business activity qualifies as a new business under paragraph (2)
37 of subdivision (e), the following rules shall apply:

38 (1) In any case where a taxpayer purchases or otherwise
39 acquires all or any portion of the assets of an existing trade or
40 business (irrespective of the form of entity) that is doing business

1 in this state (within the meaning of Section 23101), the trade or
2 business thereafter conducted by the taxpayer (or any related
3 person) shall not be treated as a new business if the aggregate fair
4 market value of the acquired assets (including real, personal,
5 tangible, and intangible property) used by the taxpayer (or any
6 related person) in the conduct of its trade or business exceeds 20
7 percent of the aggregate fair market value of the total assets of the
8 trade or business being conducted by the taxpayer (or any related
9 person). For purposes of this paragraph only, the following rules
10 shall apply:

11 (A) The determination of the relative fair market values of the
12 acquired assets and the total assets shall be made as of the last day
13 of the first taxable year in which the taxpayer (or any related
14 person) first uses any of the acquired trade or business assets in its
15 business activity.

16 (B) Any acquired assets that constituted property described in
17 Section 1221(1) of the Internal Revenue Code in the hands of the
18 transferor shall not be treated as assets acquired from an existing
19 trade or business, unless those assets also constitute property
20 described in Section 1221(1) of the Internal Revenue Code in the
21 hands of the acquiring taxpayer (or related person).

22 (2) In any case where a taxpayer (or any related person) is
23 engaged in one or more trade or business activities in this state, or
24 has been engaged in one or more trade or business activities in this
25 state within the preceding 36 months (“prior trade or business
26 activity”), and thereafter commences an additional trade or
27 business activity in this state, the additional trade or business
28 activity shall only be treated as a new business if the additional
29 trade or business activity is classified under a different division of
30 the Standard Industrial Classification (SIC) Manual published by
31 the United States Office of Management and Budget, 1987 edition,
32 than are any of the taxpayer’s (or any related person’s) current or
33 prior trade or business activities.

34 (3) In any case where a taxpayer, including all related persons,
35 is engaged in trade or business activities wholly outside of this
36 state and the taxpayer first commences doing business in this state
37 (within the meaning of Section 23101) after December 31, 1993
38 (other than by purchase or other acquisition described in paragraph
39 (1)), the trade or business activity shall be treated as a new business
40 under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) “Related person” shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) “Acquire” shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 2003, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 325411 to 345414, inclusive, of the North American Industry Classification System (NAICS) published by the United States Census Bureau, 1997 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a “qualified taxpayer” as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.8.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 2. Section 17276.8 is added to the Revenue and Taxation Code, to read:

17276.8. (a) Notwithstanding Section 17276, a qualified taxpayer may elect to take the deduction provided by Section 172 of the Internal Revenue Code, with the exception that net operating loss carrybacks shall not be allowed.

(b) For purposes of this section “qualified taxpayer” means a taxpayer that is engaged in biopharmaceutical business activities or other biotechnology business activities that are described in Codes 325411 to 345414, inclusive, of the North American Industry Classification System (NAICS) published by the United States Census Bureau, 1997 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(c) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred, *and shall be irrevocable*.

(d) This section shall only apply to net operating losses incurred by a qualified taxpayer as a net operating loss that occurred during the taxable year beginning on or after January 1, 2003.

SEC. 3. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.8, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small

business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water’s-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water’s-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “five taxable years” in lieu of “20 years” except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any income year beginning on or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “10 taxable years” in lieu of “20 taxable years.”

(2) For any income year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” referred to in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the income year.

(2) Except as provided in subdivision (g), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an “S corporation,” paragraphs (1) and (2) shall be applied to the partnership or “S corporation.”

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or

business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) “Related person” shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) “Acquire” shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 2003, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 325411 to 345414, inclusive, of the North American Industry Classification System (NAICS) published by the United States Census Bureau, 1997 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year.

(2) The amount of any loss carry forward that may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(l) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 4. Section 24416.8 is added to the Revenue and Taxation Code, to read:

24416.8. (a) Notwithstanding Section 24416, a qualified taxpayer may elect to take the deduction provided by Section 172 of the Internal Revenue Code, with the exception that net operating loss carrybacks shall not be allowed.

(b) For purposes of this section “qualified taxpayer” means a taxpayer that is engaged in biopharmaceutical business activities or other biotechnology business activities that are described in Codes 325411 to 345414, inclusive, of the North American Industry Classification System (NAICS) published by the United States Census Bureau, 1997 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(c) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred, *and shall be irrevocable*.

(d) This section shall only apply to net operating losses incurred by a qualified taxpayer as a net operating loss that occurred during the taxable year beginning on or after January 1, 2003.

1 SEC. 5. This act provides for a tax levy within the meaning of
2 Article IV of the Constitution and shall go into immediate effect.

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